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CC: Seneca, Roy
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Subject: If confirmed, McCarthy should avoid pitfalls of past at EPA

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As the U.S. Senate prepares for Gina McCarthy's confirmation hearing its worth reviewing the record of the Environmental Protection Agency's to understand the agency's approach to overseeing the oil and natural gas industry. Doing so reveals a troubling trend that, if not corrected, could negatively impact an industry that supported \$545 billion in economic activity and 9% of all new U.S. jobs in 2011, leading major U.S. investment banks to declare that "energy is beginning to carry America."

That trend isn't noticeable in the agency's official actions, but rather in email correspondence released due to Freedom of Information Act requests in multiple EPA regions – including the agency's headquarters – sought by reporters attempting to piece together seemingly disjointed agency actions.

EPA's troubled history first became publicly apparent following the agency's involvement in Parker County, Texas. In fact, the agency's actions prompted then EPW Ranking Member Jim Inhofe (R-Okla.) and five other senators to request an IG investigation to determine if proper procedures were followed surrounding the agency's issuance, and subsequent withdrawal, of an endangerment order.

The reasoning behind Inhofe's request, in part, was due to depositions showing that EPA's actions were coordinated with anti-natural gas activists. Some of the same activists whose other claims were shown to be at odds with science by the Associated Press last year. In communications between former EPA Region 6 administrator Al Armendariz and anti-shale activists Armendariz noted, "We're about to make a lot of news...there'll be an official press release in a few minutes ... time to Tivo channel 8." The former administrator also thanked the activists "for helping to educate me on the public's perspective of these issues."

The notes further showed the EPA pursued the order over the loud objections of the Texas Railroad Commission (RRC) who repeatedly tried to warn the agency its efforts were "premature" due to RRC's ongoing investigation and a lack of data supporting EPA's assertions. After EPA retracted its endangerment order, former RRC Commissioner Victor Carillo called for Armendariz's resignation and that's where things become quite revealing.

In response to Carillo's statement, Steven Chester, Deputy Assistant Administrator at EPA for enforcement and compliance, and Bob Sussman, then Senior Policy Counsel to Administrator Jackson, were both quick to disparage Carillo. In their separate notes, Chester refers to the commissioner's comments as being "a rant from someone with a myopic view" while Sussman notes the Commissioner's request is "shameful."

Making matters worse, while EPA officials ignored the advice of, and disparaged, state regulators, they appeared eager to help Josh Fox after colluding with the activist filmmaker to provide footage for his controversial documentary "Gasland."

According to the emails, Armendariz not only welcomed the filmmakers praise but also said, "it was good working with [Fox] for Gasland, we try to keep in touch every so often."

On the one hand, senior EPA officials are happy to receive praise from an activist filmmaker; on the other, they reject the pragmatic advice of state regulators and then chastise those regulators for expecting the EPA to base its actions based on sound science.

The trail doesn't end in Texas. A similar situation was unearthed by a Scranton Times Tribune FOIA request relating to the federal agency's actions in the small town of Dimock, Pa.

Here again, senior EPA officials seemed to provide more credence to activists' claims than the findings of state enforcement agencies, that in this case, were pursued under an investigation marshaled by a Democratic and Republican governor. In original correspondence, EPA's Chief of Groundwater and Enforcement in Region 3 seemingly confirmed to state regulatory officials that the water in Dimock didn't pose a threat to human health. Johnson even sought to assuage concerns that EPA's involvement would inflame the situation stating, "the guy from ATSDR hopefully can allay fears about health effects... I've been going through the data, even the "outside" analytical services agree with range of sampling already done just fine."

That sentiment was later solidified when EPA sent an email to Dimock residents on December 2, 2011, stating "the data does not indicate that the well water presents an immediate health threat to users."

But four days later, Josh Fox sent an open letter to then EPA Administrator Lisa Jackson calling for EPA to intervene in Dimock because state regulators had allegedly "failed." Within two days, EPA staff in Washington, D.C. organized a conference call – specifically referencing Fox's letter - between Jackson and officials from Region 3 to discuss the agency's ongoing efforts in Dimock. Specifically, Jackson's assistant noted, "Folks – below is the letter from Josh Fox to the administrator that was discussed during yesterday's call. A briefing has been scheduled for Friday, Dec 16 to provide the administrator with background on the situation in Dimock."

Just a few weeks later with no new data, EPA announced they would "perform water sampling at approximately 60 homes in Dimock, Pa.," based on potential

"health concerns." In the end, EPA confirmed their original assessment, that Dimock's water was safe.

Of course, it's worth noting that McCarthy wasn't part of these events herself. So, there's hope that her leadership will avoid such pitfalls and instead foster an environment where science — and not politics — informs, directs and renders each step of the agency's research and decision-making process.

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